

Message Text

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ACTION PM-03

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C O N F I D E N T I A L SECTION 01 OF 02 LONDON 00715

E.O. 11652: XGDS-1

TAGS: MARR, EQ, UK, US

SUBJECT: PHOENIX ISLANDS AGREEMENT

REF: LONDON 16462 (1974)

1. DURING COURSE OF LENGTHY DISCUSSION 14 JAN OF US-UK DIFFERENCES OVER PROPOSED PHOENIX ISLANDS AGREEMENT, EMB-OFF AND FCO REPRESENTATIVES EXPLORED IN SOME DETAIL BRITISH OBJECTIONS TO US PROPOSALS FOR ARTICLES X AND XI AND RATIONALE FOR BRITISH COUNTERDRAFT. TONE OF MEETING WAS POSITIVE THROUGHOUT, AND BRITISH GAVE IMPRESSION OF WILLINGNESS TO COMPROMISE WHEREVER POSSIBLE TO ACHIEVE SOLID, REASONABLE ARRANGEMENT THAT WOULD COVER US FACILITIES ON ISLANDS.

2. ARTICLE X REDRAFT BY BRITS (1972) WAS ATTEMPT TO "FLESH-OUT" SUCCINCT CLAIMS PARAGRAPHS CONTAINED IN AD HOC COMMITTEE (AHC) REPORT (AND REPEATED IN INITIAL US DRAFT) ALONG LINES AGREED IN OTHER US-UK AGREEMENTS (E.G. PARAGRAPH 11 OF 30 DEC 1966 MAHE ACCORD), MODIFIED TO REFLECT APPLICABILITY OF US LAW. WHILE FCO AGREES THE US PROPOSAL FOLLOWS CLOSELY THE AHC REPORT, IT RECALLS THAT QUESTION OF CLAIMS WAS GIVEN SCANTY ATTENTION IN 1970. TO AVOID POSSIBLE DISPUTES IN THIS AREA, FCO WISHES TO SPELL OUT ARRANGEMENTS IN SOME DETAIL. THEY SAY HMG HAS NO AXE TO GRIND HERE AND WOULD BE HAPPY TO

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DISCUSS WORDING WITH OPEN MIND. IN THIS CONNECTION FCO

BELIEVES ITS PROPOSED ARTICLE X CAN BE TIGHTENED UP AND SUGGESTS OMITTING AS UNNECESSARY THE OPENING PHRASE OF PARAGRAPH 3, "SUBJECT TO THE PROVISIONS OF ARTICLE V, PARAGRAPH 3..."

3. ARTICLE XI PRESENTS MORE SUBSTANTIVE PROBLEMS. BRITISH REGARD OUR DRAFT LANGUAGE AS HIGHLY ONE-SIDED AND INCONSISTENT WITH DISPUTED STATUS OF THE ISLANDS. FCO NOTES THAT BOTH OF US HAVE INTERESTS IN THE PHOENIX GROUP ALL OF WHICH MUST BE SAFEGUARDED. FCO NOTES THAT NO MENTION IS MADE IN THE US DRAFT OF JURISDICTION OVER ACTS THAT ARE OFFENSES IN THE EYES OF ONE BUT NOT BOTH PARTIES; IT ALSO BELIEVES THAT OUR FORMULATION SETS UP A NUMBER OF CONFLICTS IN JURISDICTION THAT WOULD LEAD TO AD HOC, CASE BY CASE RULINGS AND ALMOST INEVITABLE DIFFERENCES BETWEEN REPRESENTATIVES OF OUR TWO COUNTRIES (VAGUENESS OF SUBPARAGRAPH L (C), FOR EXAMPLE, STRIKES FCO AS LIKELY TO LEAD TO CONSTANT SUSPICION AND DISPUTES)

4. WHEN PRESSED BY EMBOFF, BRITISH ADMITTED THEIR COUNTERDRAFT IS SLANTED TO FAVOR THEIR INTERESTS, ALTHOUGH THEY CONSIDER IT LESS FLAGRANT THAN THEY MAINTAIN IS THE CASE IN OUR ORIGINAL FORMULATION. PRIVATELY, FCO OFFICIALS AGREED SOME COMPROMISE BETWEEN THE TWO STATED POSITIONS PROBABLY IS BOTH JUST AND NECESSARY. THEY HOPE WE CAN COME BACK TO THEM IN THIS SAME SPIRIT AND SUGGESTED THAT ONE POSSIBLE COMPROMISE WOULD BE TO GIVE EACH PARTY PRIMARY JURISDICTION OVER ITS OWN NATIONALS (AND WARDS), WITH THE US EXERCISING PRIMARY JURISDICTION OVER

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THIRD COUNTRY NATIONALS AS WELL. SUCH AN ARRANGEMENT WOULD DELINEATE PRIMARY RESPONSIBILITY WITHOUT PRECLUDING THE EXERCISE OF SECONDARY JURISDICTION IF THE OTHER PARTY OPTED NOT TO ACT.

5. FCO ALSO RAISED THE QUESTION OF CAPITAL PUNISHMENT, A STATEMENT ON WHICH WAS INCLUDED IN ITS 1972 COUNTER-DRAFT. AFTER SOME DISCUSSION - DURING WHICH EMBOFF POINTED OUT MEANINGLESSNESS OF PROVISION AS DRAFTED AND EXTREME UNLIKELIHOOD THAT SITUATION APPARENTLY ENVISIONED COULD OCCUR - BRITISH AGREED PROVISION OF THIS SORT (WHICH THEY IMPLIED HAD BEEN INCLUDED AT INSISTENCE OF PATERNALISTIC COLONIAL-TYPE, SINCE DEPARTED) SEEMED IN-APPROPRIATE AND PROBABLY COULD BE DROPPED. FCO WILL ADVISE US ON THIS POINT.

6. FINALLY, FCO REPS POINTED TO EVOLVING POLITICAL SITUATION IN THE ISLANDS (GILBERT AND ELLICE ISLAND COLONY, TO WHICH PHOENIX ISLANDS HAVE BEEN ATTACHED ADMINISTRATIVELY BY HMG, WAS GIVEN MINISTERIAL GOVERNMENT IN MAY 1974, AND IS EXPECTED TO ACHIEVE SELF-GOVERNMENT IN 1978 AND INDEPENDENCE A YEAR OR SO LATER). THEY SAID HMG IS BEGINNING TO RECEIVE QUESTIONS FROM ISLANDERS ABOUT STATUS OF US FACILITIES AND TYPES OF COMPENSATION BEING PAID. EARLY COMPLETION AND PUBLICATION OF US-UK AGREE-CONFIDENTIAL

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MENT ON PHOENIX ISLANDS COULD FORMALIZE STATUS AND LEAVE THE US FREE TO ADDRESS SOVERIGNTY QUESTION (FCO SAYS GILBERT AND ELLICE ISLANDERS ARE THINKING IN TERMS OF INDEPENDENCE FOR THE ENTIRE COLONY, INCLUDING PHOENIX GROUP) IN ISOLATION FROM QUESTION OF US FACILITIES THERE.

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